

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-1021

LIN BING,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES

On Petition for Review of an Order
of the Board of Immigration Appeals
Agency No. A98 720 465
Immigration Judge: Miriam K. Mills

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 1, 2008

Before: AMBRO, FUENTES and FISHER Circuit Judges

(Filed: October 9, 2008)

OPINION

PER CURIAM

Lin Bing, a native and citizen of China, petitions for review of a final order of removal of the Board of Immigration Appeals (BIA). We will deny the petition.

I.

Bing entered the United States in 2005, and was issued a Notice to Appear, charging him with being present in the United States without having been admitted or paroled, or arriving in the United States at a time or place other than as designated by the Attorney General. Bing, who was placed in removal proceedings, conceded he was removable on this basis, but applied for asylum, withholding of removal and relief under the United Nations Convention Against Torture (CAT).

Bing testified that he had arthritis from the age of 10, and that he began practicing Falun Gong in 1997 to relieve his condition. A.R. 71-72. He practiced in the park every Sunday, and it made his arthritis go away. A.R. 72. On August 9, 1999, he was arrested at home because of his Falun Gong practice, and was taken to a police station, and later a detention center. A.R. 73. He was detained for a little more than a month, was shocked with an electric gun, and hit with a stick on his back. He was in pain, and his nose was bleeding a lot. A.R. 73. He believed he was later released because they could not hold more people in the detention center. Id. He continued to practice Falun Gong at home every Sunday by himself. Later, he practiced with some other friends. In December 2004, police came to his home when he was not there, saying that he was practicing Falun Gong. Bing's stepmother called him and told him that the police had come and had taken his father instead. A.R. 74-75. He went to a relative's home in Fuzhou, and then left for

the United States. He testified that he continues to practice Falun Gong in the United States every Sunday, at home by himself. A.R. 75.

The Immigration Judge (IJ) found Bing “marginally credible with respect to the actual practice of Falun Gong,” but found, assuming Bing’s credibility, that he had failed to meet his burden of proof. A.R. 51-55. The Board of Immigration Appeals (BIA) thus afforded Bing a presumption of credibility pursuant to 8 U.S.C. § 1229a(c)(4)(C), but agreed that Bing had failed to meet his burden of proof. Bing filed a timely petition for review.

II.

We have jurisdiction to review a final order of removal of the BIA under 8 U.S.C. 1252(a)(1). Abdulai v. Ashcroft, 239 F.3d 542, 547 (3d Cir. 2001). The BIA here did not expressly adopt the IJ’s findings; however, it deferred in large measure to those same findings. Accordingly, we review both the IJ’s and the BIA’s decisions. See Korytnyuk v. Ashcroft, 396 F.3d 272, 286-87 (3d Cir. 2005). We must sustain the Board’s removal order if there is substantial evidence in the record to support it. Abdille v. Ashcroft, 242 F.3d 477, 483 (3d Cir. 2001).

Asylum may be granted solely on the testimony of the applicant. Even a credible asylum applicant, however, may be required to supply corroborating evidence in order to meet his burden of proof. See Chen v. Gonzales, 434 F.3d 212, 217-18 (3d Cir. 2005). Before denying asylum based on a lack of corroboration, the BIA (or IJ) must conduct a

three-part inquiry: (1) an identification of facts for which it is reasonable to expect corroboration; (2) an inquiry as to whether the applicant has provided information corroborating the relevant facts; and, if he has not, (3) an analysis of whether the applicant has adequately explained his failure to do so. Abdulai, 239 F.3d at 554. If the BIA or IJ fails to engage in this inquiry, findings regarding corroboration may be vacated and remanded. Chukwu v. Attorney General, 484 F.3d 185, 192 (3d Cir. 2007).

Bing failed to meet his burden of proof, and the corroboration analysis by both the IJ and BIA complied with the requirements of Abdulai. With regard to the first step of the Abdulai inquiry, the IJ and BIA reasonably required Bing to corroborate his Falun Gong practice given the centrality of the extent of his practice to his claim and the relative ease with which he could have gathered the required evidence. See Chukwu, 484 F.3d at 192 (stating that “[i]t is reasonable to expect corroboration where the facts are central to the applicant’s claim and easily subject to verification”). Bing testified that he had practiced Falun Gong since 1997 due to an arthritic condition, but he provided no medical evidence of that underlying condition, despite his testimony that his family members in China still go to the doctor who treated him for arthritis when they are sick. A.R. 121. Further, although Bing alleged that he had been imprisoned and suffered beatings at the hands of Chinese authorities in 1999 for his practice, he produced no evidence of his medical treatment after his release as corroboration of his injuries. Bing testified that one of the doctors who treated him in 1999 was the same doctor who treated him for arthritis.

A.R. 121-22.¹ As to the second step, the IJ and BIA accurately noted the numerous instances constituting an absence of corroborating evidence in the record showing Bing's continual practice of Falun Gong and his medical claims.

Finally, with regard to the third step of the Abdulai inquiry, as the BIA noted, the IJ gave Bing an adequate opportunity to explain at the hearing why he did not submit this evidence. A.R. 78, 121. The BIA and IJ developed a record on this issue and accurately described the reasons proffered by Bing. The BIA and IJ also did not overlook any salient facts in reaching the conclusion that these explanations were wholly inadequate. Thus, because a rational trier of fact would not be compelled to find that the missing evidence was unavailable, there are insufficient grounds for disturbing the IJ and BIA's corroboration findings. See 8 U.S.C. § 1252(b)(4).

We also agree that Bing has failed to satisfy his burden of proving eligibility for CAT protection, as the record is devoid of evidence indicating that he faces a likelihood of torture. For the foregoing reasons, we will deny the petition for review.

¹The BIA also faulted Bing for failing to present testimony from a permanent lawful resident family friend from China (his "uncle") with whom he has resided since being paroled into the United States. Given Bing's testimony that he practiced Falun Gong in his bedroom and that nobody had ever seen him practice Falun Gong in the U.S., A.R. 85; it is not clear that Bing's "uncle" would have been able to corroborate facts central to his claim.